FILE COPY

Office - Supreme Court, U. S.
FILED
NOV 10 1941
CHARLES ELMORE CROPLEY
CLERK

No. 738

In the Supreme Court of the United States

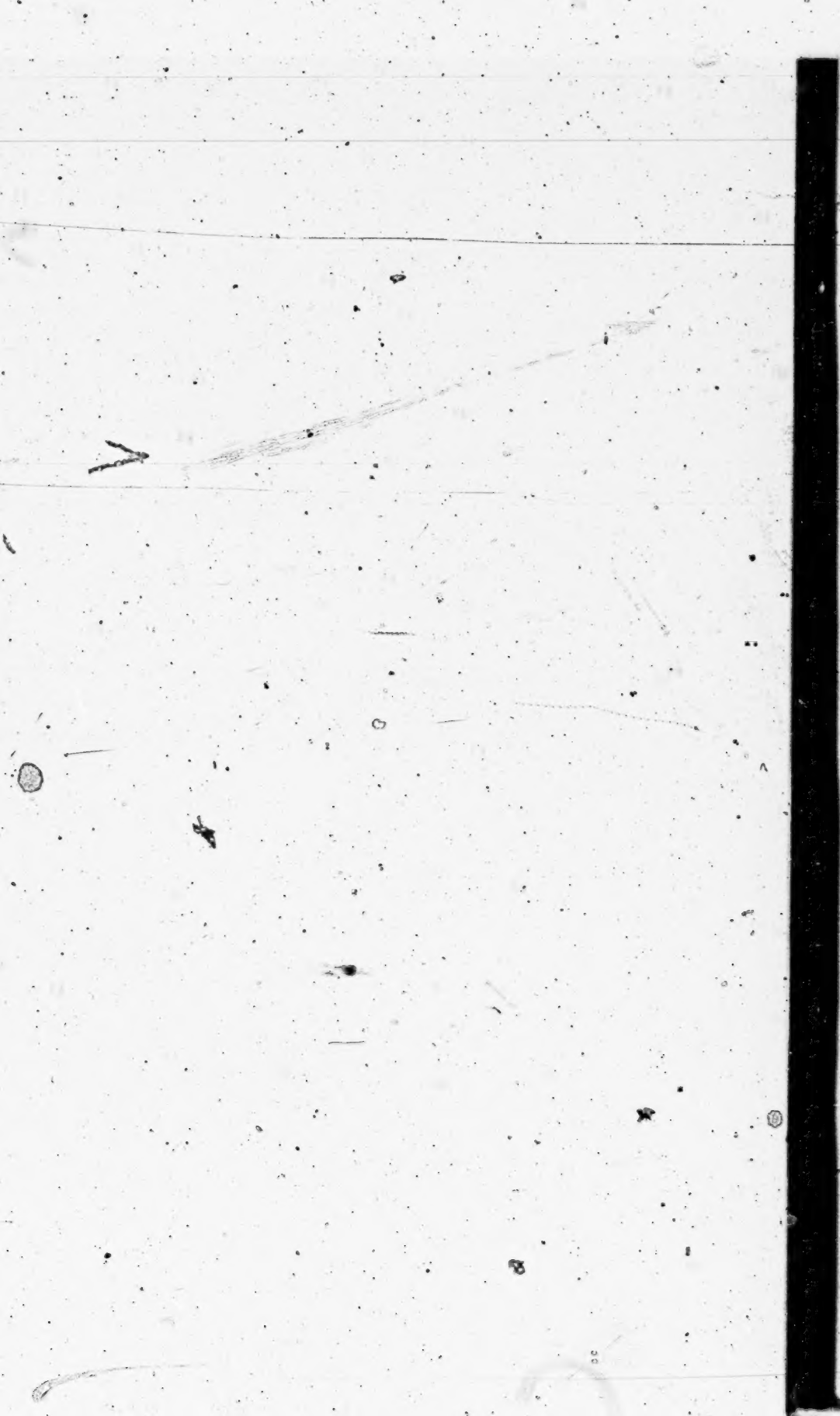
OCTOBER TERM, 1941

THE UNITED STATES OF AMERICA, PETITIONER

v.

ELIZABETH KERR, ADMINISTRATRIX OF THE ESTATE OF JOSEPH KELLY KERR, DECEASED

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA



INDEX

	Page
Opinions below	1
Jurisdiction	1
Question presented	2
Statutes involved	2
Statement	3
Specification of errors to be urged	5
Reasons for granting the writ	5
Conclusion	10
Appendix	11

CITATIONS

Cases:	
Kerr v. *United States*, 108 F. (2d) 585	3
Norwegian Nitrogen Co. v. *United States*, 288 U. S. 294	10
Singleton v. *Cheek*, 284 U. S. 493	7
United States v. *Jackson*, 280 U. S. 183	10
United States v. *Madigan*, 300 U. S. 500	10
United States v. *Moore*, 95 U. S. 760	10
United States v. *Worley*, 281 U. S. 339	9
White v. *United States*, 270 U. S. 175	4, 7
Statutes:	
World War Veterans' Act of June 7, 1924, 43 Stat. 625:	
Sec. 19, as amended (38 U. S. C., Sec. 445)	13
Sec. 301, as amended (45 Stat. 968; 38 U. S. C., Sec. 512)	6
Sec. 303	3, 12
Sec. 303, as amended March 4, 1925 (43 Stat. 1310; 38 U. S. C., Sec. 514)	2, 12
Miscellaneous:	
Bulletin No. 1, Bureau of War Risk Insurance, Treasury Department, promulgated by the Director on October 15, 1917	7, 8, 11
Letter from Administrator of Veterans' Affairs, dated November 6, 1941	14

426589—41——1

In the Supreme Court of the United States

OCTOBER TERM, 1941

No. 738

THE UNITED STATES OF AMERICA, PETITIONER

v.

ELIZABETH KERR, ADMINISTRATRIX OF THE ESTATE OF JOSEPH KELLY KERR, DECEASED

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

The Solicitor General, on behalf of the United States, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia in the above entitled case.

OPINIONS BELOW

The District Court of the United States for the District of Columbia rendered no opinion. Its judgment, however, was in accordance with the report of a commissioner of that court, to whom the case had been referred (R. 9). This report appears at R. 10–30. The opinion of the Court of Appeals for the District of Columbia (R. 36–38) is reported in 122 F. (2d) 638.

JURISDICTION

The judgment of the Court of Appeals for the District of Columbia was entered June 30, 1941 (R. 39). A petition for

rehearing, filed July 15, 1941 (R. 39–40), was denied August 11, 1941 (R. 46). The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Section 303 of the World War Veterans' Act, 1924, as amended provides that if the designated beneficiary of a yearly renewable term insurance contract issued to a veteran by the United States does not survive the insured or survives the insured and dies prior to receiving all of the installments due under the insurance policy, there shall be paid to the estate of the insured the "present value" of the monthly installments thereafter payable. In the present case the designated beneficiary survived the insured but died before all the installments under the policy were due. The question is whether the obligation of the United States to the insured's estate is to be computed upon the basis of the "present value" of the installments due at the time that the obligation arises or whether, when payment to the estate is delayed, the obligation is to be computed upon the present value of the installments as of the date of payment.

STATUTES INVOLVED

Section 303 of the World War Veterans' Act of June 7, 1924, 43 Stat. 625, as amended by the Act of March 4, 1925, 43 Stat. 1310 (38 U. S. C., Sec. 514), provides in part as follows:

> If no person within the permitted class be designated as beneficiary for yearly renewable term insurance by the insured either in his lifetime or by his last will and testament or if the designated beneficiary does not survive the insured or survives the insured and dies prior to receiving all of the two hundred and forty installments or all such as are payable and applicable, there shall be paid to the estate of the insured the present

> value of the monthly installments thereafter payable, said value to be computed as of date of last payment made under any existing award: * * *. This section shall be deemed to be in effect as of October 6, 1917.

Prior to its amendment in 1925, these provisions of Section 303 provided:

> If no person within the permitted class of beneficiaries survive the insured, or if before the completion of payments the beneficiary or beneficiaries shall die and there be no surviving person within said permitted class, then there shall be paid to the estate of the insured the present value of the monthly installments thereafter payable under the provisions of this title: * * *. This section shall be deemed to be in effect as of October 6, 1917.

The original and the amended section are quoted in full in the Appendix (pp. 12–13). The other relevant statutory provisions, as well as the pertinent regulations, also appear in the Appendix (pp. 11–12, 13–14).

STATEMENT

This case was heard in the Court of Appeals for the District of Columbia on an agreed statement (R. 1–34) and, accordingly, the facts are undisputed.

The suit is based upon a $10,000 contract of yearly renewable term insurance issued by the United States to Joseph Kelly Kerr. The insured died on November 8, 1919 (R. 1). The insured's father, Eugene Kerr, who had been designated as beneficiary of the insurance, died on June 24, 1924 (R. 1).

A claim for benefits under the policy, filed in the Veterans' Bureau, was denied by the Director on March 6, 1920, upon the ground that, prior to the death of the insured, the policy had lapsed for nonpayment of premiums (R. 25; *Kerr* v. *United States*, 108 F. (2d) 585, 586 (App. D. C.)). Upon the

basis of this disagreement, suit was instituted in the United States District Court for the District of Columbia on November 6, 1925 (R. 25), under the authority of Section 19 of the World War Veterans' Act (Appendix, pp. 13–14). The District Court ruled in favor of the Government, but the Court of Appeals reversed, holding that the insurance was in force. *Kerr* v. *United States, supra.*

Upon remand to the District Court, the present controversy arose. It relates entirely to the computation of the sum presently payable to the respondent as administratrix of the estate of the insured.

The contract, which includes the provisions of the applicable statutes and regulations (Appendix, p. 11; cf. *White* v. *United States*, 270 U. S. 175, 180), provided that there should be paid to the beneficiary during his lifetime $57.50 per month for a maximum of 240 months and that, if he died before receiving all of the installments, the present value of the remaining installments should be paid to the insured's estate (Appendix, pp. 11–13).

The District Court, in its judgment, awarded to the beneficiary's estate the sum of $3,220, which represented the 56 monthly installments, accruing between November 8, 1919, the date of the insured's death, and June 24, 1924, the date of the beneficiary's death (R. 31). This portion of the judgment is not in dispute and has been paid.

With respect to the benefits payable to the estate of the insured, the District Court first entered judgment awarding that estate $10,580, the aggregate of the 184 remaining installments of $57.50 per month (R. 2). The Government moved to correct this portion of the judgment on the ground that, under Section 303 of the World War Veterans' Act as amended (supra, pp. 2–3), only the present value of the 184 installments as of June 24, 1924, the date of the beneficiary's death, was payable. It was stipulated that the present value of the 184 installments on June 24, 1924, was $8,234 (R. 4). The court referred the matter to a commissioner for study and report

(R. 9–10). In a comprehensive report (R. 10–30), the commissioner sustained the Government's contention. The District Court accepted the views of the commissioner and modified its judgment accordingly (R. 30–31). The Court of Appeals, however, reversed this judgment, holding that the respondent was entitled to recover $10,580, the amount originally awarded by the District Court (R. 35–38).

SPECIFICATION OF ERRORS TO BE URGED

The Court of Appeals erred:

(1) In holding that Section 303 of the World War Veterans' Act, 1924, as amended, should not be applied literally to the facts of this case because of delay on the part of the Government in paying the present value of 184 installments of yearly renewable term insurance due and payable to the estate of the insured on June 24, 1924.

(2) In holding that the amendment of March 4, 1925, to Section 303 provided a guide to the computation of the Government's liability in this case which would permit the fixing of that liability at $10,580.

(3) In holding that the liability of the United States due and payable in 1924 in the stipulated sum of $8,234 has now become a liability of $10,580.

(4) In allowing, in effect, interest upon a past due obligation of the Government under a contract of yearly renewable term insurance.

(5) In overturning a consistent and long-established administrative practice not clearly erroneous.

(6) In reversing the judgment of the District Court.

REASONS FOR GRANTING THE WRIT

1. The decision of the Court of Appeals is directly opposed to the consistent and long-established administrative practice of the Veterans' Administration and its predecessor, the Veterans' Bureau. In a letter dated July 14, 1941, from the Administrator of Veterans' Affairs to the Acting Solicitor General,

contained in the record (R. 41–42), it is stated that "All cases which have been adjudicated in favor of estates of insureds under Section 303, World War Veterans' Act, have been settled upon the basis of the present value of installments as of the date the insured's estate became entitled to receive payment, except as hereinafter explained.[1] Moreover, no judgment presented to the Veterans' Administration for payment has ever embodied any contrary interpretation."

2. While the amount involved in the instant case is in itself relatively small, the decision will have burdensome financial and administrative consequences if unreversed. The Administrator of Veterans' Affairs, in his letter of July 14, 1941, states (R. 42): "I regard the question here involved as one of considerable importance. The number of cases adjudicated within the past seventeen years upon an administrative construction of the applicable statute, at variance with that now adopted by the Court of Appeals, and the magnitude of the administrative tasks which would be presented by a necessity for reviewing such prior adjudications, if the principle were to be applied to all possible cases, indicate the basis for my opinion. And, of course, the cost to the United States would be considerable."

In a supplemental communication dated November 6, 1941 (Appendix, pp. 14–15), the Administrator states that more than 58,000 cases have been adjudicated under Section 303 in accordance with the administrative interpretation.[2]

---

[1] This exception, as is apparent from the Administrator's letter (R. 42), is the result of amendatory legislation obviously inapplicable to the instant case. The Court of Appeals recognized this inapplicability, although it considered that the amendatory legislation provided a "guide for computation in this case" (R. 38).

[2] Section 303 applies only to yearly renewable term insurance. Section 301, World War Veterans Act, as amended (45 Stat. 968; 38 U. S. C., Sec. 512), contains language substantially similar to that embodied in Section 303 but relating to United States Government life (converted) insurance. If the decision of the Court of Appeals is construed as applicable to Section 301 as well as to Section 303, it will affect the method of computing liability in an additional number of cases.

3. We believe the decision of the court below to be manifestly erroneous in its interpretation of Section 303.

(a) Section 303 became a part of the insurance contract upon the date of its enactment on June 7, 1924 (Bulletin No. 1, Appendix, p. 11; *Singleton* v. *Check*, 284 U. S. 493; *White* v. *United States*, 270 U. S. 175), and after that date the contract, as so modified, provided a single, exclusive method of computing the amount of death benefits due the estate of an insured under a contract of yearly renewable term insurance, i. e., the determination of the "present value" of the installments unpaid as of the date of the death of the beneficiary, where, as here, the beneficiary survived the insured and died before receiving all of the 240 installments. It is stipulated that in the present case this method of computation would have yielded $8,234 (R. 4).

The Court of Appeals, however, concluded that the estate of the insured should be paid $10,580, an amount exactly corresponding to the sum of 184 installments of $57.50 each (R. 2), which the court stated "is * * * the present value of the remaining installments" at the time of the judgment (R. 38). It so held because it considered the intention of Congress, in the enactment of Section 303, to have been to correlate the method of computing the obligation of the United States to the estate of an insured with the date of actual payment of the insurance benefits.

We submit, however, that the language of Section 303 makes clear the purpose of Congress to correlate the method of computation of the Government's liability to the estate of an insured with the due date of the obligation, and that Congress was not concerned in that section with the date of actual payment. Congress could not have been unaware of the fact that there would necessarily be delay in actual payment in many, if not most, cases, including all of the cases, such as the present one, where the claim is denied by the Administrator of Veterans' Affairs and suit is instituted against the United States under authority of Section 19 of the World War

Veterans' Act, 1924 (Appendix, pp. 13–14). Nevertheless, Congress made no provision in Section 19, or in Section 303, or elsewhere in the World War Veterans' Act to penalize the United States or to compensate claimants because of this unavoidable delay.

(b) The Court of Appeals regarded the amendment of 1925 [3] as "affording a guide for computation in this case" (R. 38), although it recognized that the amendment is not applicable in terms (R. 38), and that it was enacted to resolve problems in a particular type of case unlike the present one (R. 54). The cases to which the amendment was intended to apply were those where awards had been made prior to 1924. The installments which had been paid under such awards had reflected an allowance of interest upon the amounts for which the due dates had been deferred as a result of the monthly installment method of settlement. Under the contract provisions and the administrative practice, interest had always been allowed to the due date or due dates of the Government's obligation (Bulletin No. 1, Appendix, p. 11) but never thereafter. Hence, the controlling factor in determining the liability of the United States to the estate of the insured or any other claimant was the due date of the Government's obligation. Since the 1924 Act provided for the estate of an insured a single immediate due date for all of the unpaid installments of insurance in lieu of the numerous deferred due dates involved in the monthly installment plan of payment theretofore in effect, and since the Act was specifically made retroactive to October 6, 1917, thus providing in certain cases a due date which had already passed, the result of the Act would have been to deprive estate-beneficiaries of awards of interest theretofore properly allowed to them in accordance with the law as it was at the time the awards were made. The Veterans' Bureau believed that while it was not inequitable to change the due date of an obligation prospec-

[3] Reference is to the clause (*supra*, p. 3) reading: "said value [present value] to be computed as of date of last payment under any existing award."

tively and effect a corresponding elimination of interest, it was highly inequitable to eliminate a portion of a matured liability by the technical expedient of legislation making a retroactive change in the due date. Accordingly it sponsored the amendment of 1925 (R. 41) changing the effective date of the computation of the value of the unpaid installments in cases where liability had already matured to the "date of last payment made under any existing award." The adoption of this amendment, limited as it was to those cases in which an award had actually been made and was in process of payment when the Act of 1924 was passed, clearly indicates an acceptance by Congress of the administrative interpretation of the 1924 Act as applying to all other cases.

(c) While the Court of Appeals did not expressly purport to base its decision upon an allowance of interest on the $8,234 which admittedly became due and payable to the estate of the insured on June 24, 1924, and which concededly represented the whole of the Government's liability on that date (R. 3), the conclusion is inescapable that the decision has precisely this effect.

It is a well-established principle enunciated by this Court in many cases that "the United States will not be required to pay interest except where the liability is imposed by statute or assumed by contract." *United States* v. *Worley*, 281 U. S. 339, 341. In the *Worley* case this Court construed the provisions of the War Risk Insurance Act of October 6, 1917, and the World War Veterans' Act and held (pp. 343–344):

> The Act does not provide for the payment of any interest on past due installments. It has been uniformly construed by the Bureau not to allow any. There is nothing in the conduct of the United States in respect of life and disability insurance from which an agreement on its part to pay interest may reasonably be implied.

While this holding was not directed expressly to payments to the estate of an insured under Section 303, that section was

specifically mentioned in the opinion (p. 343). The World War Veterans' Act makes no provision for interest to the estate of an insured where payment of the insurance as provided in Section 303 has been delayed, nor does it recite any circumstances indicating that Congress intended to allow to claimants under this section a benefit which it was held in the *Worley* case had not been allowed to other claimants.

(d) In any event the administrative construction of the legislation, which the court below ignored in its opinion and with which the decision is in direct conflict, is not shown to have been clearly erroneous and should, therefore, have been given effect. *United States* v. *Jackson*, 280 U. S. 183, 193; *United States* v. *Madigan*, 300 U. S. 500, 505. This is especially true since the Veterans' Administration drafted, in part at least (R. 42), the legislation in question. *United States* v. *Moore*, 95 U. S. 760, 763; *Norwegian Nitrogen Co.* v. *United States*, 288 U. S. 294, 316.

CONCLUSION

For the reasons stated, it is respectfully submitted that this petition for a writ of certiorari should be granted.

CHARLES FAHY,
Solicitor General.

NOVEMBER 1941.

APPENDIX

Bulletin No. 1, Bureau of War Risk Insurance, Treasury Department, promulgated by the Director on October 15, 1917, reads in part as follows:

THE UNITED STATES OF AMERICA, TREASURY DEPARTMENT, BUREAU OF WAR RISK INSURANCE

Under the authority granted by Congress in an act amending "An Act entitled 'An Act to authorize the establishment of a Bureau of War Risk Insurance in the Treasury Department,' approved September 2, 1914, and for other purposes," approved October 6, 1917, and subject in all respects to the provisions of such act, or any amendments thereto, and of all regulations thereunder now in force or hereafter adopted, all of which, together with this policy, the application therefor, and the terms and conditions published under authority of the act, shall constitute the contract:

Hereby insures from and after the ..... day of ....., 19..; ....., conditioned upon the payment of premiums as herein provided, for the principal amount of $5,000 converted into monthly installments of $28.75 (the equivalent, when paid for 240 months, of the sum insured, on the basis of interest at the rate of 3½ percent per annum) payable—

To the insured, if he/she, while this insurance is in force, shall become totally and permanently disabled commencing with such disability as established by the award of the director of the bureau and continuing during such disability; and

To the beneficiary or beneficiaries hereinafter designated, commencing upon the death of the insured, while the insurance is in force, and (except as otherwise provided) continuing for 240 months if no installments have been paid for total and permanent disability or if any such installments have been paid, then for a number of months sufficient to make 240 in all: * * *.

Section 303 of the World War Veterans' Act of June 7, 1924 (43 Stat. 625), provided:

If no person within the permitted class of beneficiaries survive the insured, or if before the completion of payments the beneficiary or beneficiaries shall die and there be no surviving person within said permitted class, then there shall be paid to the estate of the insured the present value of the monthly installments thereafter payable under the provisions of this title: *Provided,* That in cases where the estate of the insured would escheat under the laws of the place of his residence the insurance shall not be paid to the estate of the insured, but shall escheat to the United States and shall be credited to the United States Government life-insurance fund or the military and naval insurance appropriation, as may be proper. This section shall be deemed to be in effect as of October 6, 1917.

Section 303 of the World War Veterans' Act, as amended March 4, 1925 (sec. 14, 43 Stat. 1310; 38 U. S. C., Sec. 514), provided—

If no person within the permitted class be designated as beneficiary for yearly renewable term insurance by the insured either in his lifetime or by his last will and testament or if the designated beneficiary does not survive the insured or survives the insured and dies prior to receiving all of the two hundred and forty installments or all such as are payable and applicable, there shall be paid to the estate of the insured the present value of the

monthly installments thereafter payable, said value to be computed as of date of last payment made under any existing award: *Provided*, That all awards of yearly renewable term insurance which are in course of payment on the date of the approval of this Act shall continue until the death of the person receiving such payments, or until he forfeits same under the provisions of this Act. When any person to whom such insurance is now awarded dies or forfeits his rights to such insurance then there shall be paid to the estate of the insured the present value of the remaining unpaid monthly installments of the insurance so awarded to such person: *Provided further*, That no award of yearly renewable term insurance which has been made to the estate of a last surviving beneficiary shall be affected by this amendment: *Provided further*, That in cases when the estate of an insured would escheat under the laws of the place of his residence the insurance shall not be paid to the estate but shall escheat to the United States and be credited to the military and naval insurance appropriation. This section shall be deemed to be in effect as of October 6, 1917.

Section 19 of the World War Veterans' Act of June 7, 1924, as amended (38 U. S. C., Sec. 445), provides in pertinent part:

> In the event of disagreement as to claim, including claim for refund of premiums, under a contract of insurance between the Veterans' Administration and any person or persons claiming thereunder an action on the claim may be brought against the United States either in the district court of the United States for the District of Columbia or in the district court of the United States in and for the district in which such persons or any one of them resides, and jurisdiction is hereby conferred upon such courts to hear and determine all such controversies. * * * In all cases where the Veterans' Ad-

ministration acknowledges the indebtedness of the United States upon any such contract of insurance and there is a dispute as to the person or persons entitled to payment, a suit in the nature of a bill of interpleader may be brought by the Veterans' Administration in the name of the United States against all persons having or claiming to have any interest in such insurance * * *.

No suit on yearly renewable term insurance shall be allowed under this section unless the same shall have been brought within six years after the right accrued for which the claim is made or within one year after July 3, 1930, whichever is the later date, * * *.

The number of cases in which one-sum payments have been made to the estates of insureds under the provisions of Section 303, World War Veterans' Act, is shown in the following letter from the Administrator of Veterans' Affairs, and the table attached to that letter:

VETERANS' ADMINISTRATION,
Washington, November 6, 1941.

Honorable CHARLES FAHY,
Acting Solicitor General,
Department of Justice,
Washington, D. C.

MY DEAR MR. SOLICITOR GENERAL: Supplementing my letter of July 14, 1941, concerning the opinion of the Court of Appeals of the District of Columbia, in the case of *Elizabeth Kerr v. United State* decided June 30, 1941, and transmitted with your letter of July 8, 1941, based upon the claim of Joseph Kelly Kerr, XC-76,422, I am now able to inform you that 58,963 cases have been adjudicated under Section 303 of the World War Veterans' Act of 1924, as amended, in accordance with the administrative practice stated in my letter.

There is attached a brief table, prepared in the Beneficiary Statistics Division of the Office of Budget and Statistics of this Administration, which will give you an idea of the number of

cases so adjudicated, beginning in 1925, with totals for the five-year intervals in 1930 and 1935 and the annual totals thereafter from 1936 to 1941, inclusive.

Very truly yours,

[s] FRANK T. HINES,
Frank T. Hines,
Administrator.

Encl.

Term insurance—Lump-sum payments

Fiscal year	Total to date	Annual increases	Fiscal year	Total to date	Annual increases
1925	96		1938	51,292	4,616
1930	19,058		1939	56,452	5,160
1935	38,742		1940	57,993	1,541
1936	42,398	3,656	1941	58,963	970
1937	46,676	4,278			

Number of death cases on which installments of Term Insurance are being paid, 11,453.

U. S. GOVERNMENT PRINTING OFFICE: 1941